S.B.CIVIL WRIT PETITION NO.96/1996

Amar Lal Mathur
v.
State of Rajasthan & Ors.

DATE OF ORDER :: 8th May, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. P.Bohara, for the petitioner.
Mr. S.S.Ladrecha, Additional Government Advocate.

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The petitioner, a Junior Engineer (Civil) in the Department of Irrigation, by this petition for writ has given challenge to the orders dated 19.4.1985 and 9.1.1990 whereby the persons junior to him were promoted as Assistant Engineer (Civil) in accordance with the Rajasthan Service of Engineers and Research Officers (Irrigation) Branch Rules, 1954 (hereinafter referred to as “the Rules of 1954”).

The factual matrix necessary to be noticed for adjudication of present petition for writ is as follows:-

The Raj Pramukh of Rajasthan while exercising powers conferred upon him by proviso to Article 309 of the Constitution of India framed the Rules of 1954 to regulate recruitment and other conditions of service of the persons appointed to Rajasthan Engineers and Research Officers (Irrigation) Branch Service. A

Junior Engineer (Civil) under the Rules of 1954 is having an avenue for promotion as Assistant Engineer (Civil) subject to the possession of eligibility as prescribed in column 5 of Schedule-I appended with the Rules of 1954. The criteria to be considered for appointment as Assistant Engineer (Civil) by way of promotion as prescribed under Rule 24(4) of the Rules of 1954 is merit and seniority-cum-merit in proportion of 1:1.

The allegation of the petitioner is that by order impugned dated 19.4.1985 the respondents promoted Shri Harishankar Kansal and Shri Sheetal Prasad against the vacancies of the year 1981-82, ignoring seniority of the petitioner. Similarly, by an another order dated 9.1.1990 promotion to one Shri Hanuman Das Goria was given against the vacancies of the year 1982-83, who too was junior than the petitioner. According to the petitioner promotion was denied to him as he was having adverse remarks in the annual confidential reports for the year 1978-79 and 1979-80 but those adverse remarks were expunged vide orders dated 4.4.1983 and 29.8.1983.

In the factual background above the petitioner has claimed for promotion as Assistant Engineer from the date it was accorded to his juniors against the vacancies of the year 1981-82 and 1982-83.

In reply to the writ petition the stand of the respondents is that promotions were given to Sarva Shri Harishankar Kansal, Sheetal Prasad and Hanuman Das Goria by considering their candidature under merit criteria. The candidature of the petitioner too was considered but on comparative assessment the persons named above were found fit to be promoted as Assistant Engineers (Civil) against the vacancies relating to merit quota. A preliminary objection is also raised by the respondents with regard to delay in filing the writ petition.

Heard counsel for the parties.

From perusal of the orders impugned it is apparent that Sarva Shri Harishankar Kansal, Sheetal Prasad and Hanuman Das Goria were promoted against the vacancies pertaining to merit quota. It is well settled that while considering candidature for promotion under the criteria of merit the departmental promotion committee is required to make comparative assessment of merit possessed by all the persons coming within the zone of consideration. The respondents in specific terms have stated in reply to the writ petition that candidature of the petitioner was considered for promotion but on assessment of comparative merit he was not found fit to be promoted as Assistant Engineer (Civil) against the vacancies pertaining to merit quota. It is true that adverse

remarks entered in annual confidential reports of the petitioner for the years 1978-79 and 1979-80 were expunged but mere expunging of those adverse remarks does not prove or establish better merit of the petitioner vis-a-vis the persons promoted. Under the criteria of merit the concept of seniority is having no role to play. The departmental promotion committee is required to make a comparative assessment of all eligible persons and a subjective satisfaction on basis of objective consideration is sufficient to make promotions of suitable persons under the criteria referred above. There is nothing on record on basis of that it can be said that the departmental promotion committee while making consideration for promotion to the post of Assistant Engineer (Civil) in accordance with the criteria of merit did not act objectively. No material is available on record to establish better merit of the petitioner vis-a-vis the persons promoted. Thus the argument raised by counsel for the petitioner is having no substance.

I also found force in the objection raised by the respondents that the petition for writ suffers from delay and latches. It is well settled that in the matter of promotions the person aggrieved should approach the appropriate forum may that be in administrative side or in judicial side as early as possible. In the instant matter the petitioner at the first instance questioned validity of the impugned

promotions in the year 1995 by way of submitting a representation though the promotions impugned were made in the year 1985 and 1990. By a flux of time time a valuable right accrued in favour of the persons who were promoted and, therefore, such a valuable right cannot be disturbed at a belated stage.

For the reasons mentioned above, this petition for writ fails and, therefore, the same is dismissed.

(GOVIND MATHUR),J.

Kkm/ps.